

AMENDED IN SENATE JUNE 9, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1843

Introduced by Assembly Members Jones and Gordon

February 18, 2014

An act to amend *Section 129 of the Business and Professions Code*, and to amend Sections 3025.5 and 3111 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1843, as amended, Jones. Child custody evaluations: confidentiality.

Existing

(1) *Existing* law authorizes a court, in any contested child custody or visitation rights proceeding, to appoint a child custody evaluator to conduct a child custody evaluation, as specified, if the court determines it is in the best interests of the child. Existing law requires the child custody evaluator, if directed by the court, to file a written confidential report on his or her evaluation at least 10 days before any hearing regarding the custody of the child with the clerk of the court, as specified. Existing law requires this report to be served on the parties or their attorneys, and any other counsel appointed for the child. Existing law otherwise prohibits the disclosure of the report, except in certain probate guardianship proceedings, as specified.

Existing law requires the information from a report containing psychological evaluations of a child or recommendations regarding custody or visitation submitted to the court in any proceeding involving

child custody or visitation rights to be contained in a document that is to be placed in the confidential portion of the court file. Existing law applies this requirement to, among other things, the written confidential report described above, child custody or visitation recommendations made to the court pursuant to mediation proceedings, and a written statement of issues and contentions put forth by a child's appointed counsel. Existing law prohibits these reports and recommendations from being disclosed, except to specified persons, including, among others, a party to the proceeding or his or her attorney, a federal or state law enforcement officer, a court employee acting within the scope of his or her duties, a child's appointed counsel, or any other person upon order of the court for good cause.

This bill would additionally authorize the disclosure of this confidential information to the licensing entity of a child custody evaluator and would prescribe the manner in which the licensing entity is authorized to use the confidential information disclosed to it, as specified.

~~The~~

This bill would make a clarifying change to authorize the disclosure of a child custody evaluator's written confidential report to be disclosed pursuant to the provisions described above and would specify that a disclosure to the licensing entity of a child custody evaluator is not an unwarranted disclosure, as specified. The bill would delete an obsolete provision relating to the written statement of issues and contentions put forth by a child's appointed counsel.

(2) Existing law requires a board, as defined, within the Department of Consumer Affairs, upon receipt of any complaint respecting a licensee, to notify the complainant of the initial and final action taken on his or her complaint, as specified. Existing law requires the board, when it deems appropriate, to notify the person against whom the complaint is made of the nature of the complaint and authorizes the board to request appropriate relief for the complainant and meet and confer with the complainant and the licensee in order to mediate the complaint.

This bill would, notwithstanding any other law, require the board, upon receipt of a child custody evaluation report, as specified, to notify the noncomplaining party in the underlying child custody dispute who is a subject of that report, of the pending investigation.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 129 of the Business and Professions Code*
2 *is amended to read:*

3 129. (a) As used in this section, “board” means every board,
4 bureau, commission, committee and similarly constituted agency
5 in the department which issues licenses.

6 (b) Each board shall, upon receipt of any complaint respecting
7 a licentiate thereof, notify the complainant of the initial
8 administrative action taken on his complaint within 10 days of
9 receipt. Each board shall thereafter notify the complainant of the
10 final action taken on his complaint. There shall be a notification
11 made in every case in which the complainant is known. If the
12 complaint is not within the jurisdiction of the board or if the board
13 is unable to dispose satisfactorily of the complaint, the board shall
14 transmit the complaint together with any evidence or information
15 it has concerning the complaint to the agency, public or private,
16 whose authority in the opinion of the board will provide the most
17 effective means to secure the relief sought. The board shall notify
18 the complainant of such action and of any other means which may
19 be available to the complainant to secure relief.

20 (c) The board shall, when the board deems it appropriate, notify
21 the person against whom the complaint is made of the nature of
22 the complaint, may request appropriate relief for the complainant,
23 and may meet and confer with the complainant and the licentiate
24 in order to mediate the complaint. Nothing in this subdivision shall
25 be construed as authorizing or requiring any board to set or to
26 modify any fee charged by a licentiate.

27 (d) It shall be the continuing duty of the board to ascertain
28 patterns of complaints and to report on all actions taken with
29 respect to such patterns of complaints to the director and to the
30 Legislature at least once a year. The board shall evaluate those
31 complaints dismissed for lack of jurisdiction or no violation and
32 recommend to the director and to the Legislature at least once a
33 year such statutory changes as it deems necessary to implement
34 the board’s functions and responsibilities under this section.

35 (e) It shall be the continuing duty of the board to take whatever
36 action it deems necessary, with the approval of the director, to
37 inform the public of its functions under this section.

1 (f) Notwithstanding any other law, upon receipt of a child
2 custody evaluation report submitted to a court pursuant to Chapter
3 6 (commencing with Section 3110) of Part 2 of Division 8 of the
4 Family Code, the board shall notify the noncomplaining party in
5 the underlying custody dispute who is a subject of that report, of
6 the pending investigation.

7 ~~SECTION 1.~~

8 SEC. 2. Section 3025.5 of the Family Code is amended to read:

9 3025.5. (a) In a proceeding involving child custody or
10 visitation rights, if a report containing psychological evaluations
11 of a child or recommendations regarding custody of, or visitation
12 with, a child is submitted to the court, including, but not limited
13 to, a report created pursuant to Chapter 6 (commencing with
14 Section 3110) of this part and a recommendation made to the court
15 pursuant to Section 3183, that information shall be contained in a
16 document that shall be placed in the confidential portion of the
17 court file of the proceeding, and may not be disclosed, except to
18 the following persons:

19 ~~(a)~~

20 (1) A party to the proceeding and his or her attorney.

21 ~~(b)~~

22 (2) A federal or state law enforcement officer, *the licensing*
23 *entity of a child custody evaluator*, a judicial officer, court
24 employee, or family court facilitator of the superior court of the
25 county in which the action was filed, or an employee or agent of
26 that facilitator, acting within the scope of his or her duties.

27 ~~(c)~~

28 (3) Counsel appointed for the child pursuant to Section 3150.

29 ~~(d)~~

30 (4) Any other person upon order of the court for good cause.

31 (b) *Confidential information contained in a report prepared*
32 *pursuant to Section 3111 that is disclosed to the licensing entity*
33 *of a child custody evaluator pursuant to subdivision (a) shall*
34 *remain confidential and shall only be used for purposes of*
35 *investigating allegations of unprofessional conduct by the child*
36 *custody evaluator, or in a criminal, civil, or administrative*
37 *proceeding involving the child custody evaluator. All confidential*
38 *information including, but not limited to, the identity of any minors*
39 *shall retain their confidential nature in any criminal, civil, or*
40 *administrative proceeding resulting from the investigation of*

1 *unprofessional conduct and shall be sealed at the conclusion of*
2 *the proceeding and shall not subsequently be released. Names that*
3 *are confidential shall be listed in attachments separate from the*
4 *general pleadings. If the confidential information does not result*
5 *in a criminal, civil, or administrative proceeding, it shall be sealed*
6 *after the licensing entity decides that no further action will be*
7 *taken in the matter of suspected licensing violations.*

8 **~~SEC. 2.~~**

9 **SEC. 3.** Section 3111 of the Family Code is amended to read:

10 3111. (a) In any contested proceeding involving child custody
11 or visitation rights, the court may appoint a child custody evaluator
12 to conduct a child custody evaluation in cases where the court
13 determines it is in the best interests of the child. The child custody
14 evaluation shall be conducted in accordance with the standards
15 adopted by the Judicial Council pursuant to Section 3117, and all
16 other standards adopted by the Judicial Council regarding child
17 custody evaluations. If directed by the court, the court-appointed
18 child custody evaluator shall file a written confidential report on
19 his or her evaluation. At least 10 days before any hearing regarding
20 custody of the child, the report shall be filed with the clerk of the
21 court in which the custody hearing will be conducted and served
22 on the parties or their attorneys, and any other counsel appointed
23 for the child pursuant to Section 3150. The report may be
24 considered by the court.

25 (b) The report shall not be made available other than as provided
26 in subdivision (a) or Section 3025.5, or as described in Section
27 204 of the Welfare and Institutions Code or Section 1514.5 of the
28 Probate Code. Any information obtained from access to a juvenile
29 court case file, as defined in subdivision (e) of Section 827 of the
30 Welfare and Institutions Code, is confidential and shall only be
31 disseminated as provided by paragraph (4) of subdivision (a) of
32 Section 827 of the Welfare and Institutions Code.

33 (c) The report may be received in evidence on stipulation of all
34 interested parties and is competent evidence as to all matters
35 contained in the report.

36 (d) If the court determines that an unwarranted disclosure of a
37 written confidential report has been made, the court may impose
38 a monetary sanction against the disclosing party. The sanction
39 shall be in an amount sufficient to deter repetition of the conduct,
40 and may include reasonable attorney's fees, costs incurred, or both,

1 unless the court finds that the disclosing party acted with substantial
2 justification or that other circumstances make the imposition of
3 the sanction unjust. The court shall not impose a sanction pursuant
4 to this subdivision that imposes an unreasonable financial burden
5 on the party against whom the sanction is imposed. This
6 subdivision shall become operative on January 1, 2010.

7 (e) The Judicial Council shall, by January 1, 2010, do the
8 following:

9 (1) Adopt a form to be served with every child custody
10 evaluation report that informs the report recipient of the
11 confidentiality of the report and the potential consequences for the
12 unwarranted disclosure of the report.

13 (2) Adopt a rule of court to require that, when a court-ordered
14 child custody evaluation report is served on the parties, the form
15 specified in paragraph (1) shall be included with the report.

16 (f) For purposes of this section, a disclosure is unwarranted if
17 it is done either recklessly or maliciously, and is not in the best
18 interests of the child.

19 (g) *For purposes of this section, a disclosure of the confidential*
20 *written report to the licensing entity of a child custody evaluator*
21 *is not an unwarranted disclosure.*